

AMENDED IN ASSEMBLY AUGUST 14, 2006

AMENDED IN ASSEMBLY JUNE 28, 2006

AMENDED IN SENATE MAY 16, 2006

AMENDED IN SENATE MAY 3, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE FEBRUARY 28, 2006

## SENATE BILL

**No. 1207**

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**Introduced by Senator Alarcon**

January 26, 2006

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An act to amend Section 708 of, and to add Section 708.5 to, the Corporations Code, relating to corporations.

### LEGISLATIVE COUNSEL'S DIGEST

SB 1207, as amended, Alarcon. Corporations: uncontested election of a listed corporation.

Existing law provides that, in any election of the members of the board of directors of a corporation, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected.

This bill would authorize a listed corporation *that has eliminated cumulative voting* to amend its articles of incorporation or bylaws to provide that, in an uncontested election ~~of a listed corporation~~, as defined, approval by a majority of the shares represented and voting would be required to elect each director *and would specify procedures*

*to be followed if an incumbent director fails to be elected at such an election.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 708 of the Corporations Code is  
2 amended to read:

3 708. (a) Except as provided in Sections 301.5 and 708.5,  
4 every shareholder complying with subdivision (b) and entitled to  
5 vote at any election of directors may cumulate such shareholder's  
6 votes and give one candidate a number of votes equal to the  
7 number of directors to be elected multiplied by the number of  
8 votes to which the shareholder's shares are normally entitled, or  
9 distribute the shareholder's votes on the same principle among as  
10 many candidates as the shareholder thinks fit.

11 (b) No shareholder shall be entitled to cumulate votes (i.e.,  
12 cast for any candidate a number of votes greater than the number  
13 of votes that the shareholder normally is entitled to cast) unless  
14 the candidate or candidates' names have been placed in  
15 nomination prior to the voting and the shareholder has given  
16 notice at the meeting prior to the voting of the shareholder's  
17 intention to cumulate the shareholder's votes. If any one  
18 shareholder has given that notice, all shareholders may cumulate  
19 their votes for candidates in nomination.

20 (c) Except as provided in Section 708.5, in any election of  
21 directors, the candidates receiving the highest number of  
22 affirmative votes of the shares entitled to be voted for them up to  
23 the number of directors to be elected by those shares are elected;  
24 votes against the director and votes withheld shall have no legal  
25 effect.

26 (d) Subdivision (a) applies to the shareholders of any mutual  
27 water company organized or existing for the purpose of  
28 delivering water to its shareholders at cost on lands located  
29 within the boundaries of one or more reclamation districts now or  
30 hereafter legally existing in this state and created by or formed  
31 under the provisions of any statute of this state, but does not  
32 otherwise apply to the shareholders of mutual water companies  
33 unless their articles or bylaws so provide.

1 (e) Elections for directors need not be by ballot unless a  
2 shareholder demands election by ballot at the meeting and before  
3 the voting begins or unless the bylaws so require.

4 SEC. 2. Section 708.5 is added to the Corporations Code, to  
5 read:

6 708.5. (a) For purposes of this section, ~~“uncontested election~~  
7 ~~of a listed corporation”~~ *the following definitions shall apply:*

8 (1) *“Uncontested election”* means an election ~~by the~~  
9 ~~shareholders of a domestic corporation that qualifies as a listed~~  
10 ~~corporation under subdivision (d) of Section 301.5 in which, at~~  
11 ~~the time of the election, the number of nominees for the board of~~  
12 ~~directors does of directors in which, at the expiration of the time~~  
13 ~~fixed under the articles of incorporation or bylaws requiring~~  
14 ~~advance notification of director candidates or, absent such a~~  
15 ~~provision in the articles of incorporation or bylaws, at a time~~  
16 ~~fixed by the board of directors that is not more than 14 days~~  
17 ~~before notice is given of the meeting at which the election is to~~  
18 ~~occur, the number of candidates for election does not exceed the~~  
19 number of directors to be elected by the shareholders at that  
20 election.

21 (2) *“Listed corporation”* means a domestic corporation that  
22 qualifies as a listed corporation under subdivision (d) of Section  
23 301.5.

24 (b) ~~(1)~~ Notwithstanding paragraph (5) of subdivision (a) of  
25 Section 204, a listed corporation ~~described in subdivision (a) that~~  
26 ~~has eliminated cumulative voting pursuant to subdivision (a) of~~  
27 ~~Section 301.5~~ may amend its articles of incorporation or bylaws  
28 to provide that, in an uncontested election ~~of a listed corporation,~~  
29 approval of the shareholders, as specified in Section 153, shall be  
30 required to elect a director. ~~For~~

31 ~~(2) Notwithstanding Sections 211 and 902, an amendment of~~  
32 ~~the articles of incorporation or bylaws, described in paragraph~~  
33 ~~(1), may be adopted by approval of the shareholders, as specified~~  
34 ~~in Section 153.~~

35 ~~(c) In an election of directors following an amendment of the~~  
36 ~~articles of incorporation or bylaws described in subdivision (b),~~  
37 ~~for purposes of Section 153, shares voted withheld shall be~~  
38 ~~considered shares voted against a director and shall be considered~~  
39 ~~represented and voting. However, shares that do not indicate a~~  
40 ~~vote shall not be considered represented and voting.~~

~~(d) Shareholders may not cumulate their votes in accordance with Section 708 in an uncontested election of a listed corporation unless the corporation amends its articles of incorporation or bylaws to provide for cumulative voting.~~

~~(e)~~

~~(c) Notwithstanding subdivision (b) of Section 301, if, an incumbent director fails to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation described in subdivision (b), an incumbent director fails to be approved by the shareholders, then the incumbent director shall resign within 90 days of the date of the election and the board shall declare vacant the office of that director. A director's resignation pursuant to this subdivision shall not constitute removal for any purpose. A vacancy on the board resulting from a director's resignation under this subdivision shall be filled in accordance with the procedures set forth in Section 305. A candidate in an uncontested election of a listed corporation who fails to be approved by the shareholders shall not be appointed to fill any vacancy on the board. that has amended its articles of incorporation or bylaws pursuant to subdivision (b), then, unless the incumbent director has earlier resigned, the term of the incumbent director shall end on the date that is the earlier of 90 days after the date on which the voting results are determined pursuant to Section 707 or the date on which the board of directors selects a person to fill the office held by that director pursuant to subdivision (d).~~

~~(d) Any vacancy on the board of directors resulting from any failure of a candidate to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation that has amended its articles of incorporation or bylaws pursuant to subdivision (b) shall be filled in accordance with the procedures set forth in Section 305.~~

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